BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

CLIFORD L. CRONE) Claimant)	
VS.)	Docket No. 239,263
GREAT BEND COOPERATIVE ASSOCIATION) Respondent)	200.000200,200
AND)	
FARMLAND MUTUAL INSURANCE COMPANY Insurance Carrier)	

ORDER

Claimant appealed the February 4, 2002 Order entered by Administrative Law Judge Bryce D. Benedict. The Board placed this appeal on its summary calendar. The Director of the Division of Workers Compensation appointed Stacy Parkinson of Olathe, Kansas, to serve in place of Board Member David A. Shufelt, who recused himself from this claim.

ISSUES

This is a claim for a March 30, 1998 accident. In December 2001, claimant and claimant's attorney requested Administrative Law Judge Bruce E. Moore to remove himself from this claim and all future proceedings involving claimant's attorney.

Through a series of assignments, this claim was assigned to Administrative Law Judge Bryce D. Benedict to address the recusal requests. By Order dated February 4, 2002, Judge Benedict ruled the requests for recusal were moot in this claim. Judge Benedict found Judge Moore had previously requested Director Philip S. Harness to assign this claim to another administrative law judge, and the Director had complied.

Claimant and claimant's attorney contend Judge Benedict erred. In their brief to the Board dated March 21, 2002, they do not address Judge Benedict's finding that the recusal request was moot. Instead, claimant and claimant's attorney argue that a reasonable person would doubt Judge Moore's impartiality in dealings with claimant's attorney. Their

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brief only addresses the request for a blanket recusal. Accordingly, claimant and claimant's attorney request the Board to issue a blanket order removing Judge Moore from all proceedings in which claimant's attorney appears.

Conversely, respondent and its insurance carrier contend this claim has already been removed from Judge Moore and assigned to another Judge. Therefore, respondent and its insurance carrier argue the recusal requests are moot. Accordingly, they request attorney fees for the time expended on the recusal requests.

The issues before the Board on this appeal are:

- 1. Are the requests for recusal made by claimant and claimant's attorney moot due to the Director's assigning the claim to another Judge?
- 2. If not, should the Board remove Judge Moore from this claim or all other matters in which claimant's counsel appears?
- 3. Are respondent and its insurance carrier entitled to an award for attorney fees?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire file, the Board finds and concludes:

The request for an order preventing Judge Moore from participating in this claim is moot. This claim has been assigned to another Judge.

Respondent and its insurance carrier's request for attorney fees is denied as the Board is unaware of any provision in the Workers Compensation Act that allows it to assess attorney fees against claimant or his attorney under these circumstances.

Accordingly, the appeal in this claim should be dismissed.

WHEREFORE, the Board dismisses this appeal.

IT IS SO ORDERED.

Dated this	day of June 2002.	
	BOARD MEMBER	
	BOARD MEMBER	
	BOARD MEMBER	

c: Roger A. Riedmiller, Attorney for Claimant
Jeffrey E. King, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director